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RESERVATIONS TO TREATIES

Texts of a draft resolution and draft conclusions adopted by the Drafting Committee on first reading

DRAFT RESOLUTION OF THE INTERNATIONAL LAW COMMISSION ON RESERVATIONS TO NORMATIVE MULTILATERAL TREATIES INCLUDING HUMAN RIGHTS TREATIES

The International Law Commission,

Having considered, at its forty-ninth session, the question of the unity or diversity of the juridical regime for reservations,

Aware of the discussion currently taking place in other forums on the subject of reservations to normative multilateral treaties, and particularly treaties concerning human rights,

Wishing to contribute to this discussion in the framework of the consideration of the subject of reservations to treaties that has been before it since 1993,

1. Reaffirms its commitment to the effective application of the reservations regime established by articles 19 to 23 of the Vienna Conventions on the Law of Treaties of 1969 and 1986, and particularly to the object and purpose of the treaty as the most important of the criteria for determining the admissibility of reservations;

2. Considers that, because of its flexibility, this regime is suited to the requirements of all treaties, of whatever object or nature, and achieves a satisfactory balance between the objectives of preservation of the integrity of the text of the treaty and universality of participation in the treaty;

3. Considers that these objectives apply equally in the case of reservations to normative multilateral treaties, including treaties in the area of human rights and that, consequently, the general rules enunciated in the above-mentioned Vienna Conventions govern reservations to such instruments;

4. Nevertheless considers that the establishment of monitoring bodies by many human rights treaties gave rise to legal questions that were not envisaged at the time of the drafting of those treaties, connected with appreciation of the admissibility of reservations formulated by States;

5. Also considers that where these treaties are silent on the subject, the monitoring bodies established thereby are competent to comment upon and express recommendations with regard, inter alia, to the admissibility of reservations by States, in order to carry out the functions assigned to them;

6. Stresses that this competence of the monitoring bodies does not exclude the traditional modalities of control by the contracting parties, on the one hand, in accordance with the above-mentioned provisions of the Vienna Conventions of 1969 and 1986 and, where appropriate by the organs for settling any dispute that may arise concerning the implementation of the treaties;

7. Suggests that consideration be given to providing specific clauses in normative multilateral treaties, including in particular human rights treaties, or to elaborating protocols to existing treaties to confer competence on the monitoring body to appreciate or determine the admissibility of a reservation;

8. Notes that the legal force of the findings made by monitoring bodies in the exercise of their power to deal with reservations can not exceed that resulting from the powers given to them for the performance of their general monitoring role;

9. Calls upon States to cooperate with monitoring bodies and give due consideration to any recommendations that they may make or to comply with their determination if such bodies have been granted authority to that effect;

10. Notes also that, in the event of incompatibility of a reservation with the object and purpose of a treaty, it is primarily the reserving State that has the responsibility of taking action. This action may consist, for example, in the State either foregoing becoming a party or withdrawing its reservation, or modifying the latter so as to eliminate the incompatibility;

11. Expresses the hope that the principles enunciated above will help to clarify the reservations regime applicable to normative multilateral treaties, particularly in the area of human rights;

12. Emphasizes that the principles enunciated above are without prejudice to the practices and rules developed by monitoring bodies within regional contexts.

DRAFT CONCLUSIONS OF THE INTERNATIONAL LAW COMMISSION
ON RESERVATIONS TO NORMATIVE MULTILATERAL TREATIES
INCLUDING HUMAN RIGHTS TREATIES

The International Law Commission has considered, at its forty-ninth session, the question of the unity or diversity of the juridical regime for reservations. The Commission is aware of the discussion currently taking place in other forums on the subject of reservations to normative multilateral treaties, and particularly treaties concerning human rights, and wishes to contribute to this discussion in the framework of the consideration of the subject of reservations to treaties that has been before it since 1993 by drawing the following conclusions:

1. The Commission reaffirms its commitment to the effective application of the reservations regime established by articles 19 to 23 of the Vienna Conventions on the Law of Treaties of 1969 and 1986, and particularly to the object and purpose of the treaty as the most important of the criteria for determining the admissibility of reservations;

2. The Commission considers that, because of its flexibility, this regime is suited to the requirements of all treaties, of whatever object or nature, and achieves a satisfactory balance between the objectives of preservation of the integrity of the text of the treaty and universality of participation in the treaty;

3. The Commission considers that these objectives apply equally in the case of reservations to normative multilateral treaties, including treaties in the area of human rights and that, consequently, the general rules enunciated in the above-mentioned Vienna Conventions govern reservations to such instruments;

4. The Commission nevertheless considers that the establishment of monitoring bodies by many human rights treaties gave rise to legal questions that were not envisaged at the time of the drafting of those treaties, connected with appreciation of the admissibility of reservations formulated by States;

5. The Commission also considers that where these treaties are silent on the subject, the monitoring bodies established thereby are competent to comment upon and express recommendations with regard, inter alia, to the admissibility of reservations by States, in order to carry out the functions assigned to them;

6. The Commission stresses that this competence of the monitoring bodies does not exclude the traditional modalities of control by the contracting parties, on the one hand, in accordance with the above-mentioned provisions of the Vienna Conventions of 1969 and 1986 and, where appropriate by the organs for settling any dispute that may arise concerning the implementation of the treaties;

7. The Commission suggests that consideration be given to providing specific clauses in multilateral normative treaties, including in particular human rights treaties, or to elaborating protocols to existing treaties to confer competence on the monitoring body to appreciate or determine the admissibility of a reservation;

8. The Commission notes that the legal force of the findings made by monitoring bodies in the exercise of their power to deal with reservations can not exceed that resulting from the powers given to them for the performance of their general monitoring role;

9. The Commission calls upon States to cooperate with monitoring bodies and give due consideration to any recommendations that they may make or to comply with their determination if such bodies have been granted authority to that effect;

10. The Commission notes also that, in the event of incompatibility of a reservation with the object and purpose of a treaty, it is primarily the reserving State that has the responsibility of taking action. This action may consist, for example, in the State either foregoing becoming a party or withdrawing its reservation, or modifying the latter so as to eliminate the incompatibility;

11. The Commission expresses the hope that the principles enunciated above will help to clarify the reservations regime applicable to normative multilateral treaties, particularly in the area of human rights;

12. The Commission emphasizes that the principles enunciated above are without prejudice to the practices and rules developed by monitoring bodies within regional contexts.